Appendix A

In the Court of Appeal
of the
State of California

First Appellate District

Division Four

1/Civil 48990
(Superior Ct. No. 673-492)

Certified for Publication

Container Corporation of America,
Plaintiff and Appellant,

vs.

Franchise Tax Board,
Defendant and Respondent.

[Filed April 14, 1981]

Container Corporation of America appeals from a judgment denying partial refund of corporation franchise taxes paid for the income years 1963, 1964 and 1965. We affirm the judgment.

The question is whether, under stipulated facts, appellant was properly treated as deriving income from sources both within and outside California (Rev. & Tax. Code, § 25101)[1] on the basis that appellant and its foreign subsidiaries constituted a unitary enterprise.

[1]Revenue and Taxation Code section 25101 for the period in question provided in part: "When the income of a taxpayer subject

Appellant, a Delaware corporation headquartered in Chicago, is engaged in the production and distribution of paperboard packaging materials. Appellant is subject to corporation franchise taxes on its activities in California. During the disputed tax years, appellant controlled 20 subsidiaries in Western Europe and Latin America. All these subsidiaries except one were engaged in the paperboard packaging business.

Appellant has assigned responsibility for its United States operations to regional vice-presidents, each responsible for corporate operations in his area. This same policy of decentralization was followed in setting up the foreign subsidiaries. Appellant's first foreign operation was established in Colombia in 1944. The Colombian group directed legal work, selected and trained personnel, and promoted local sales; the parent corporation managed the technical and financial aspects of the business and supplied some equipment and raw materials. All the foreign subsidiaries were managed predominantly by local citizens. Self-reliance by the subsidiaries was encouraged.

During the years in question, 38 of appellant's approximately 13,400 employees were assigned to foreign sub-

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to the tax imposed under this part is derived from or attributable to sources both within and without the State, the tax shall be measured by the net income derived from or attributable to sources within this State. . . . Income attributable to isolated or occasional transactions in states or countries in which the taxpayer is not doing business shall be allocated to the state in which the taxpayer has its principal place of business or commercial domicile." (Stats. 1957, c. 2097, § 1, p. 3721.)

sidiaries; some other employees of appellant were transferred to foreign subsidiaries and were no longer on appellant's payroll. Appellant had no special aim of transferring employees to the foreign subsidiaries. Such transfers generally responded to a specific need of a subsidiary. If the subsidiary requested assistance from appellant in finding a person with particular qualifications, appellant might suggest one of its own employees. Employees transferred to foreign subsidiaries usually continued to draw some pay from appellant, and fringe benefits except participation in appellant's stock bonus plan were continued even after transfer. Language and cultural differences, and a perceived need to present an acceptable local image, did substantially inhibit transfer of employees from the parent corporation to the foreign subsidiaries.

Only three of appellant's executives dealt regularly with the foreign subsidiaries. Local employees were in day-to-day control, but all important moves of the subsidiaries were subject to review by appellant's management. Appellant and its foreign subsidiaries usually reached decisions by mutual consent, but appellant held local management responsible for the performance of foreign subsidiaries. Appellant was represented on the board of directors of most of the subsidiaries.

There was no regular program for training in the United States of employees of foreign subsidiaries. But 10 or 12 times a year a foreign employee came to the United States for several weeks to learn appellant's operations. The foreign subsidiaries paid the cost of these visits.

Appellant made loans to its subsidiaries totaling $7,704,987, $7,155,714 and $3,223,371, for the three disputed years. The subsidiaries also borrowed from local sources; appellant guaranteed approximately one-third of these loans.

The foreign subsidiaries' budgets were regularly sent to appellant for its information but specific approval was not required. Current financial data were furnished to appellant each month. The foreign subsidiaries provided appellant with a more detailed financial statement at the end of each year. Although appellant's management thus kept informed of operations of the foreign subsidiaries, most financial decisions were made by the management of the individual companies.

All the foreign subsidiaries except those in the Netherlands and Germany were audited by the accounting firm which appellant used for its own audits. On the other hand, tax returns to foreign governments were locally prepared. These returns reported only the revenue produced and costs incurred by the subsidiary in the taxing jurisdiction. Each subsidiary used local law firms.

Appellant purchased no raw materials or finished products from its subsidiaries and did not engage in joint marketing efforts with them. Appellant sold paperboard and raw materials in small amounts to the foreign subsidiaries; those materials could have been obtained from other sources. Appellant also purchased paper products from outside parties, for the benefit of the foreign subsidiaries. Appellant entered into technical service agreements with some subsidiaries and provided such services for other subsidi-

aries under informal arrangements. Appellant did not cooperate so extensively with any nonaffiliated companies.

Occasionally, appellant assisted subsidiaries in the acquisition of equipment and machinery. Some of the equipment was purchased directly from appellant. Appellant also sometimes acted as a sales broker for the foreign subsidiaries. Although this function could have been performed by independent brokers, the commissions charged by the latter would probably be higher than the charge appellant made for the same services.

Appellant contends that its California and out-of-state operations do not comprise a unitary enterprise to which respondent board may properly apply its formula for apportionment of income. Constitutional principles prohibit taxation in the absence of a link between the property to be taxed and the taxing entity. (See *Mobil Oil Corp. v. Commissioner of Taxes* (1980) 445 U.S. 425, 436-437; *Miller Bros. Co. v. Maryland* (1954) 347 U.S. 340, 344-345.) Appellant maintains that the "unitary method of ownership, use and operation of the business of the parent and its subsidiaries" was not established here. (See *Edison California Stores v. McColgan* (1947) 30 Cal.2d 472, 482.)

Because the parties submitted the case to the trial court on a stipulation, the case presents no conflicting evidence. Therefore, this court is not constrained by the substantial evidence rule. The trial court's findings are not binding on us and we must make our own determination of the questions of law presented by the stipulated facts. (*Rice Growers' Association of California v. County of Yolo* (1971) 17 Cal.App.3d 227, 230, cert. den. 404 U.S. 941; *Dealers In-*

stallation Service, Inc. v. State Bd. of Equal. (1970) 13 Cal.App.3d 395, 399; *Chase Brass & Copper Co. v. Franchise Tax Bd.* (1970) 10 Cal.App.3d 496, 502, cert. den. 400 U.S. 961; *Standard Register Co. v. Franchise Tax Board* (1968) 259 Cal.App.2d 125, 129-130.)

A corporate taxpayer's income must be subjected to apportionment[2] when it "is derived from or attributable to sources both within and without the State." (Rev. & Tax. Code, § 25101, set out in fn. 1, *ante; Honolulu Oil Corp. v. Franchise Tax Bd.* (1963) 60 Cal.2d 417, 425; *Superior Oil Co. v. Franchise Tax Bd.* (1963) 60 Cal.2d 406, 417.) "[T]he linchpin of apportionability in the field of state income taxation is a unitary-business principle." (*Mobil Oil Corp. v. Commissioner of Taxes, supra,* 445 U.S. 425, 439.) The fairness of allocating to California a just proportion of the profits earned from a unitary business[3] is settled. (See

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[2]The California method of apportionment is explained in Keesling and Warren, *The Unitary Concept in the Allocation of Income* (1960) 12 Hastings L.J. 42, 43: "Under the formula method the business activities within the state are considered to be an inseparable part of a business carried on both within and without the state. The total gross income from the entire business is determined. The allowable deductions are then subtracted and the remaining net income is apportioned within and without the state by means of an allocation formula consisting of various factors which are thought to be relevant in the production of income, such as property, payroll, and sales."

[3]Keesling and Warren also discuss the unitary treatment of multicorporate enterprises (*op. cit. supra,* 12 Hastings Law Journal 42, 57): "In any case where a business would be considered unitary if conducted by one taxpayer, it should likewise be so considered even though conducted by two or more affiliated corporations. Just as a state may look beyond its borders and take into account the entire income of a business in arriving at a determination of the amount of income reasonably attributable to the activities con-

Butler Bros. v. McColgan (1942) 315 U.S. 501, 509; *El Dorado Oil Works v. McColgan* (1950) 34 Cal.2d 731, 738, app. dism., 340 U.S. 801; *Edison California Stores v. McColgan* (1947) 30 Cal.2d 472, 478; *Butler Bros. v. McColgan* (1941) 17 Cal.2d 664, 677-678, aff'd in 315 U.S. 501; *Handlery v. Franchise Tax Bd., supra,* 26 Cal.App.3d 970, 974.)

The propriety of applying the unitary concept in taxing foreign corporations was established in *Butler Bros. v. McColgan, supra,* 17 Cal.2d 664. The court there noted that only in circumstances where the corporation's California business is "truly separate and distinct from its business without this state, so that the segregation of income may be made clearly and accurately, that the separate accounting method may properly be used." (*Id.,* at pp. 667-668.) The court set out a three-part test to determine the unitary nature of a taxpayer's business: "(1) unity of ownership; (2) unity of operation as evidenced by central purchasing, accounting and management divisions; and (3) unity of

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ducted within the state, so in the case of a group of affiliated corporations engaged in the conduct of a business, it may look at the total income of the group to determine the amount of income attributable to the portion of the business conducted within the state by one or more of the members of the group."

The fairness of the formula apportionment method is explained as follows: "[T]he 'formula' apportionment of unitary business income has not only been found to be constitutionally permissible, but . . . it is often the only reasonable and practical manner in which a state may levy and collect taxes to which it is constitutionally entitled. It might be described as a sort of rule of necessity, having its origin in the accommodation of a state's constitutional right to tax income derived from within the state, to constitutional due process of law and interstate commerce provisions." (*Handlery v. Franchise Tax Bd.* (1972) 26 Cal.App.3d 970, 974.)

use in its centralized executive force and general system of operation." (*Id.*, at p. 678; see *Honolulu Oil Corp. v. Franchise Tax Bd., supra,* 60 Cal.2d 417, 423; *Superior Oil Co. v. Franchise Tax Bd., supra,* 60 Cal.2d 406, 412; *John Deere Plow Co. v. Franchise Tax Bd.* (1951) 38 Cal.2d 214, 229, app. dism., 343 U.S. 939; *Edison California Stores v. McColgan, supra,* 30 Cal.2d 472, 478; *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 502; *Standard Register Co. v. Franchise Tax Board, supra,* 259 Cal.App.2d 125, 129.)

The first element, unity of ownership, is present here: the parent corporation owned the foreign subsidiaries. However, unity of ownership does not render a business unitary if the other two requirements are not met. (See *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 502.)

Unity of operation and unity of use are concepts that may to some degree overlap, but generally functions that in administrative theory are labeled "staff" fall within the "operation" category and "line" functions fall within the "use" category. (See *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 502.) Determining the presence of unity between the parent corporation and the foreign subsidiaries in the area of operations is guided by various factors; no one element controls the decision.

Although appellant bought no raw materials or finished products from its subsidiaries, appellant did sometimes sell small quantities of paperboard and raw materials to its subsidiaries. The subsidiaries could have obtained those materials from other sources at the same price appellant

charged, but the access to materials stocked by the parent is of some relevance. (See *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 503.)

Appellant sold some of its used equipment to its subsidiaries during the period in question. Appellant also assisted its subsidiaries in the acquisition of equipment and machinery. Appellant sometimes contacted a subsidiary when considering disposition of a piece of equipment in good operating order that might assist in the subsidiary's operation.

Appellant assisted its subsidiaries in procuring paper, personnel and equipment. Appellant purchased some paper from third parties in order to convey such goods to its foreign subsidiaries. If a subsidiary was unable to fill an important vacancy, it would request assistance from appellant in locating an individual with the proper qualifications. Appellant generally looked within its own ranks for such a person. Appellant's purchasing department played a part in procuring equipment from independent suppliers for the benefit of its subsidiaries. These purchasing and brokerage ties between parent and subsidiary are of some relevance. (See *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 503.)

Although appellant and all but two of its foreign subsidiaries kept separate books of account, all the foreign operations were audited by the same accounting firm that audited appellant's books. A format developed by appellant for the transmission of monthly and quarterly financial reports was used by the subsidiaries.

Appellant loaned to its subsidiaries over $18,000,000 during the period in question. Appellant also guaranteed approximately one-third of the subsidiaries' other loans. Although the subsidiaries may have been able to obtain credit from other sources, the loans serve as "substantial evidence of unity of operation." (*Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 503.) The fact that the subsidiaries could readily turn to appellant for financial assistances points toward unity. (*Id.*) So does the foreign subsidiaries' ability to utilize appellant as a guarantor of its loans. "It must have been deemed advantageous to the over-all management to have handled the transaction in this way, otherwise a separate arrangement would have been made." (*Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 503.)

Although there were no common employee benefit plans, some employees of the subsidiaries remained on appellant's payroll. Employees of appellant who transferred to the foreign subsidiaries were allowed to continue their employee benefits, and seven such employees were given options to purchase appellant's stock.

There was considerable interplay between appellant and its foreign subsidiaries in the area of corporate expansion. Although there was no continued effort by appellant to solicit business for its foreign subsidiaries, on at least one occasion appellant assisted in the negotiation of a contract for a foreign subsidiary.

The third element, unity of use, relates to executive forces and operational systems. (*Superior Oil Co. v. Franchise Tax Bd., supra,* 60 Cal.2d 406, 415; *Chase Brass &*

Copper Co. v. Franchise Tax Bd., supra, 10 Cal.App.3d 496, 504.) Appellant contends that the absence of a steady flow of raw materials and manufactured goods between the parent corporation and its subsidiaries compels a conclusion that unity of use is lacking. But the California Supreme Court has twice held an operation to be unitary though there was no substantial flow of goods between corporate entities. (See *Honolulu Oil Corp. v. Franchise Tax Bd., supra,* 60 Cal.2d 417; *Superior Oil Co. v. Franchise Tax Bd., supra,* 60 Cal.2d 406.) In *Superior Oil, supra,* the Supreme Court declared that "[n]one of the three unities . . . necessarily require the interstate movement of products." (*Id.*, at p. 415.) In *Honolulu Oil, supra,* the court rejected a contention that control by central management and centralized performance of service functions are insufficient alone to support a conclusion of a unitary operation(*id.*, at p. 423), and determined that "the mere fact that production and sale . . . are a local operation does not transform that operation to something distinct and apart." (*Id.*, at p. 424.)

Citing *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, appellant argues that *Honolulu Oil* and *Superior Oil* are not applicable outside the special facts presented in those cases. In *Chase Brass* this court held that a California subsidiary was not unitary with that part of its parent's operation which dealt with materials not being purchased by the subsidiary. (*Id.*, at p. 506.) But the decision does not depart from the earlier and binding holdings in *Honolulu Oil* and *Superior Oil, supra.* The ties which existed between the parent and subsidiary in areas beyond the subsidiary's normal business activities appear

to have been too tenuous to be given weight. Furthermore, the court noted that "[t]he fact of the sales alone . . . does not determine the business to be unitary." (*Id.*, at p. 506.) Appellant's contention that a substantial flow of goods is essential to the existence of a unitary manufacturing or mercantile business must be rejected. Product flow is important but it is only one of several factors to be evaluated in determining whether a business is unitary.

Appellant complains that the imposition of the unitary apportionment system severely misallocates to California, income from foreign sources. Appellant suggests that to avoid such a result substantial flow of goods between the parent and the subsidiary should be prerequisite to a determination of unitary status. But the adoption of a different formula than the one presently in effect is a legislative matter.

Because a substantial flow of goods between the parent and its subsidiaries is not requisite to unitary status, the operational interrelationship of the corporate entities must be evaluated. The integration of major executive functions is a factor of great importance pointing toward unity. (See *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 504.) Although the everyday operations of the subsidiaries were handled by local employees, major policy decisions of the subsidiaries were subject to review by appellant. "The 'major policy matters' are what count in our estimation of integration." (*Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 504.) High officials of appellant gave directions to subsidiaries for compliance with the parent's standard of professional-

ism, profitability and ethical practices. Appellant constantly reviewed the financial reports of its subsidiaries; if these reports had not given sufficient information of a subsidiary's condition, appellant would have intervened. The submission of financial reports on a monthly basis from the subsidiary to the parent corporation is of some significance. (See *Standard Register Co. v. Franchise Tax Board, supra,* 259 Cal.App.2d 125, 136.) Appellant's officials served on the boards of directors of most of the subsidiaries. Thus, control on the highest level was exerted by appellant. Appellant also employed a "foreign operations staff" to oversee the subsidiaries, to prepare studies regarding the subsidiaries' activities and to give directions to the management of the subsidiaries.

Appellant's policy of regional decentralization was followed by the subsidiaries. The parent corporation was involved with the training of local nationals for management positions. Appellant provided important personnel, equipment and financing to assist its first foreign subsidiary to enter the paperboard packaging industry. Such assistance in the initial stages of operation was crucial to the success of the subsidiary. Appellant continued to provide technical assistance to its subsidiaries. The subsidiaries had ready access to appellant's expertise. The subsidiaries were only charged costs and an apportionment of overhead; in some cases the charges were not recovered. The extent of the technical assistance provided by appellant was substantial; it included design work, sample packaging, marketing research, formula methods used in packaging and cost accounting. Appellant did not provide extensive technical service to any nonaffiliated corporations.

The subsidiaries were prohibited from transferring information received from appellant to third parties.

The consolidation of the domestic and overseas operations extended to a public image of unity; in its 1963 annual report, appellant referred to the employees of subsidiaries as its own employees.

Appellant argues that the foreign subsidiaries are independent in their management, production, and distribution. But appellant's organizational framework calls for decentralization even in its United States operations. The relationship between parent and subsidiary comports with appellant's general philosophy of local management and a reliance on key executives to meet corporate goals. Appellant emphasizes the lack of product flow between the parent and the subsidiaries. But the low level of product exchange must be considered in conjunction with the nature of the business, high transportation costs and import restrictions. All but the latter consideration apply to appellant's United States operations. The desirability of creating an image of a locally operated enterprise is evident. The court in *Standard Register Co. v. Franchise Tax Board, supra,* 259 Cal.App.2d 125, recognized this tendency. "At all times Pacific division attempted to create the image of its being a California manufacturer in order to compete in the western market which was very conscious of buying western." (*Id.*, at p. 132.) The characterization by the parent corporation of its subsidiary as an independent entity does not compel a finding that several divisions of a corporation are nonunitary. Here, as in *Standard Register,* a study of the operations of appellant and its subsidiaries shows areas where the subsidiaries acted indepen-

dently of appellant. But there are other areas in which the parent and subsidiaries contributed to each oth[illegible] in unity of use and unity of operation. (See *Standard Register Co. v. Franchise Tax Board, supra,* 259 Cal.App.2d 125, 134-135.) Appellant's own view of its operations as a unitary business is evidenced by statements in the company's annual reports. Appellant identifies itself as "the world's largest producer of paperboard packaging," referring to overseas and domestic operations. Appellant also discussed in its reports the strategic location of packaging, printing and fabricating facilities both in the United States and abroad. Appellant stated that "[t]he overseas operations of CCA continue to grow and to become a more substantial part of the company's strength and profitability." Appellant further projected the image of unity by referring to its subsidiaries as overseas operations or overseas divisions. Appellant's self-image is relevant. (See *Standard Register Co. v. Franchise Tax Board, supra,* 259 Cal.App. 2d 125, 135.)

The three unities are satisfied here. Although some elements which normally exist in a unitary operation, e.g., a substantial flow of goods, are lacking, the combination of all the factors and ties between the parent and the subsidiary support respondent board's determination that the operation is unitary. Appellant engaged in the same business activities as its subsidiaries. The administrative regulations indicate that a strong inference of a unitary business exists where the taxpayer is engaged in the same type of business.[4] This administrative construction of the Cali-

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[4]California Administrative Code, title 18, section 25120, subdivision (b), provides in part: "The determination of whether the

fornia tax laws "is entitled to great weight, and the courts generally will not depart from construction unless it is clearly erroneous or unauthorized." (*Coca Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918, 921; also see *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 647; *Albright v. State of California* (1979) 101 Cal. App.3d 14, 18; *Cal. Correctional Officers' Assn. v. Board of Administration* (1978) 76 Cal.App.3d 786, 793-794; *Clayton v. County of Los Angeles* (1972) 26 Cal.App.3d 390, 396.) The interchange between parent and subsidiaries in the areas of technical assistance, development and management policymaking, is significant.

The portion of appellant's business done within the State of California is dependent upon or contributes to the operation of the business outside the state. (*Superior Oil Co. v. Franchise Tax Bd., supra,* 60 Cal.2d 406, 412; *Edison California Stores v. McColgan, supra,* 30 Cal.2d 472, 481; *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 501.) Although in many respects the

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activities of the taxpayer constitute a single trade or business or more than one trade or business will turn on the facts of each case. In general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the divisions under consideration are integrated with, dependent upon or contribute to each other and the operations of the taxpayer as a whole. The following factors are considered to be good indicia of a single trade or business; and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business:

"(1) *Same type of business:* A taxpayer is generally engaged in a single trade or business when all of its activities are in the same general line. For example, a taxpayer which operates a chain of retail grocery stores will almost always be engaged in a single trade or business."

foreign subsidiaries acted independently, the financing, general direction and control of the subsidiaries were in the hands of appellant. The subsidiaries were treated as overseas divisions of the parent corporation, bringing appellant's entire operation within the provisions of section 25101 of the Revenue and Taxation Code and requiring application of the formula apportionment method in determining the California taxes due from appellant.

Appellant contends that the inclusion of its foreign subsidiaries in the apportionment base violates the California taxation statute as well as the due process clause. But *Superior Oil Co. v. Franchise Tax Bd., supra,* 60 Cal.2d 406, *Honolulu Oil Corp. v. Franchise Tax Bd., supra,* 60 Cal.2d 417, *John Deere Plow Co. v. Franchise Tax Board, supra,* 38 Cal.2d 214, and *Max Factor & Co. v. Franchise Tax Bd.* (1973) 35 Cal.App.3d 7, contradict appellant's argument. The court in *Max Factor, supra,* noted that "Appellant (Taxpayer) is a Delaware corporation doing business in California. In the years in question, it had three subsidiary corporations operating in foreign countries. . . . In determining the measure of California franchise tax, Taxpayer and its subsidiaries were properly treated as 'engaged in a single unitary business.' (See Rev. & Tax. Code, §§ 25101, 25102; *Edison California Stores v. McColgan,* 30 Cal.2d 472, 479-480.)" (*Id.,* at p. 9.) Appellant relies on *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, as indicating that foreign subsidiaries should not be included in the apportionment base. Appellant states that "it seems fair to assume that the fact Braden was operating in a foreign country, as are the foreign subsidiaries in this case, was an important factor

in the court's determination." The assumption is unwarranted. Although the operations of Braden Company were excluded, so were those of Bear Creek Company, a United States operation. (*Id.*, at p. 506.) The court in *Chase Brass* distinguished between vertical and horizontal relationships. (See *Chase Brass & Copper Co. v. Franchise Tax Bd., supra,* 10 Cal.App.3d 496, 502.) The taxpayer in *Chase* was a California subsidiary of a United States parent corporation which also had other subsidiaries. Here, the taxpayer is the parent corporation; the vertical ties between parent and subsidiary are stronger than horizontal ties between sibling subsidiaries.

The due process challenge to the inclusion of foreign subsidiaries in the apportionment base of a state's taxation formula was rejected by the United States Supreme Court in *Bass, etc., Ltd. v. Tax Comm.* (1924) 266 U.S. 271. The court held that "[i]f the entire business of the corporation is not transacted within the State, the tax is to be based upon the portion of such ascertained net income determined by the proportion which the aggregate value of specified classes of the assets of the corporation within the State bears to the aggregate value of all such classes of assets wherever located." (*Id.*, at pp. 277-278.) The apportionment method was approved because the state meant to reach and in fact did reach only the profits earned within the state. Here, too, the California apportionment method is designed to reach profits earned within the state by combining all of appellant's unitary operations. The Supreme Court reiterated its basic premise in *Mobil Oil Corp. v. Commissioner of Taxes, supra,* 445 U.S. 425. The taxpayer in *Mobil Oil* did not argue that the state's

worldwide apportionment was inaccurate and unfair but asserted that foreign source income was subject to different tests. The Supreme Court in *Mobil Oil* stressed the importance of the unitary business principle as a justification for inclusion of foreign source income in a state's apportionment base. (*Id.*, at p. 438.) The Supreme Court noted the connection between due process requirements and the determination that a business is unitary: "Where the business activities of the . . . [subsidiaries] have nothing to do with the activities of the recipient in the taxing State, due process considerations might well preclude apportionability, because there would be no underlying unitary business. . . . Mobil has failed to sustain its burden of proving any unrelated business activity on the part of its subsidiaries and affiliates that would raise the question of nonapportionability." (*Id.*, at p. 442.)

Due process demands that a minimal connection exist between the out-of-state activities and the taxing state and a rational relationship between income attributed to the out-of-state and the intrastate values of the enterprise. The tax may not be disproportionate to the business transacted by appellant in the taxing state. (*Exxon Corp. v. Wisconsin Dept. of Revenue* (1980) 447 U.S. 207, 219-220; *Hans Rees' Sons v. N. Carolina* (1931) 283 U.S. 123, 135.) A sufficient nexus is established if the corporation "avails itself of the 'substantial privilege of carrying on business' within the state; . . ." (*Mobil Oil Corp. v. Commissioner of Taxes, supra,* 445 U.S. 425, 437; also see *Exxon Corp. v. Wisconsin Dept. of Revenue, supra,* 447 U.S. 207, 220.)

Appellant asserts that the application of the apportionment formula to foreign subsidiaries fails to account for different wages, property costs and returns on sales. Appellant recognizes that there are variations in wages, property costs and returns on sales within the United States, but argues that the wholly different nature of the elements in foreign countries creates an unreasonable result. Variations in profitability within the United States have not precluded apportionment of income according to an appropriate formula. (See *John Deere Plow Co. v. Franchise Tax Bd., supra*, 38 Cal.2d 214, 224-225.) Where a company is engaged in a unitary business, a state may apply an apportionment formula to the taxpayer's total income to arrive at a rough approximation of the corporate income attributable to activities within the state. (*Exxon Corp. v. Wisconsin Dept. of Revenue, supra*, 447 U.S. 207, 223; *Moorman Mfg. Co. v. Bair* (1978) 437 U.S. 267, 273.) There is no necessity for a substantial flow of goods between the parent and the subsidiary corporation. Although appellant may treat its foreign operations as independent, the business activities of the subsidiaries benefit substantially from "an umbrella of centralized management and controlled interaction." (*Exxon Corp. v. Wisconsin Dept. of Revenue, supra*, 447 U.S. 207, 224.)

Appellant points out that for its own purposes income derived from appellant's United States operations is separately accounted for. But a taxpayer's internal accounting methods are not binding on the taxing authorities. (*Exxon Corp. v. Wisconsin Dept. of Revenue, supra*, 447 U.S. 207, 224; see *Butler Bros. v. McColgan, supra*, 315 U.S. 501, 507-508.)

Appellant points to each of the factors used in the formula apportionment in California—wages, property and sales—and emphasizes the major differences between wage rates in the United States and those in other countries. Appellant asserts that this wage differential is not offset by a higher level of productivity. But such variations in wages also exist in the United States, and do not preclude unitary treatment.

Respondent may constitutionally apply its apportionment formula to appellant's total income in order to establish tax liability. Appellant had the "distinct burden of showing by 'clear and cogent evidence' that it results in extraterritorial values being taxed." (*Butler Bros. v. McColgan, supra,* 315 U.S. 501, 507; *N. & W. Ry. Co. v. No. Carolina* (1936) 297 U.S 682, 688.) Appellant's accounting evidence does not meet that burden. The fairness of applying the formula apportionment method must be evaluated in practical terms. A state's attempt to impose an accounting method in order to determine its proper share of the burden of taxation is "faced with the impossibility of allocating specifically the profits earned by the processes conducted within its borders." (*Underwood T'Writer Co. v. Chamberlain* (1920) 254 U.S. 113, 121; also see *Exxon Corp. v. Wisconsin Dept. of Revenue, supra,* 447 U.S. 207, 224.) California's apportionment is not so burdensome as to violate due process.

Appellant urges that its statistical evidence shows that the application of the apportionment formula yields a distorted result. The United States Supreme Court in *Norfolk & W. R. Co. v. Tax Comm'n.* (1968) 390 U.S. 317,

329, held that "when a taxpayer comes forward with strong evidence tending to prove that the . . . formula will yield a grossly distorted result in its particular case, the State is obliged to counter that evidence or to make the accommodations necessary to assure that its taxing power is confined to its constitutional limits. If it fails to do so and if . . . the taxpayer has . . . show[n] that the tax is so excessive as to burden interstate commerce, the taxpayer must prevail." The evidence appellant presented with respect to the disproportionality of income allocation is not compelling. It fails to account for contributions to income which result from the functional integration and centralization of management which exist in a unitary operation. It is "misleading to characterize the income of the business as having a single identifiable 'source.' Although separate geographical accounting may be useful for internal auditing, for purposes of state taxation it is not constitutionally required." (*Mobil Oil Corp. v. Commissioner of Taxes, supra,* 445 U.S. 425, 438; also see *Exxon Corp. v. Wisconsin Dept. of Revenue, supra,* 447 U.S. 207, 222-223.)

Appellant contends, citing *Japan Line, Ltd. v. County of Los Angeles* (1979) 441 U.S. 434, that inclusion of its foreign subsidiaries in the apportionment formula is an unconstitutional burden on foreign commerce. But the question presented in *Japan Line* was "whether instrumentalities of commerce that are owned, based, and registered abroad and that are used exclusively in international commerce, may be subjected to apportioned ad valorem property taxation by a State." (*Id.*, at p. 444.) The court did not reach questions as to "taxability of foreign-owned instrumentalities engaged in interstate commerce, or of

domestically owned instrumentalities engaged in foreign commerce." (*Id.*, at p. 444, fn. 7.) The Supreme Court distinguished situations involving a lack of apportionment from those challenging the mathematical imprecision of an apportionment formula. *Japan Line* involved a situation "where true apportionment does not exist and cannot be policed by this Court at all." (*Id.*, at p. 455.) Thus, *Japan Line* does not affect the present case.

The Constitution of the United States (art. I, § 8) provides that "Congress shall have power . . . 3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Generally, if the state tax "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State," there is no impermissible burden on interstate commerce. (*Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274, 279.) But when a state seeks to tax instrumentalities of foreign commerce, two additional considerations are involved. The first is the enhanced risk of multiple taxation. The second is that state tax on instrumentalities of foreign commerce may impede federal uniformity in an area where such uniformity is essential. (*Japan Line Ltd. v. County of Los Angeles, supra,* 441 U.S. 434, 446-448.) "Due to the absence of an authoritative tribunal capable of ensuring that the aggregation of taxes is computed on no more than one full value, a state tax, even though 'fairly apportioned' to reflect an instrumentality's presence within the State, may subject foreign commerce ' " 'to the risk of a double tax burden to which [domestic] commerce is not exposed and which the

commerce clause forbids.'"' *Evco v. Jones*, 409 U.S., at 94, quoting *J. D. Adams Mfg. Co.*, 304 U.S., at 311." (*Japan Line, Ltd. v. County of Los Angeles, supra*, 441 U.S. 434, 447-448.) Appellant's multiple taxation claim rests predominantly on the conflict between the California apportionment system and a separate accounting method. The variations which result from the imposition of two different methods of calculation do not necessarily violate the commerce clause. The Supreme Court has consistently held that the commerce clause "does not call for mathematical exactness nor for the rigid application of a particular formula; only if the resulting valuation is palpably excessive will it be set aside." (*Northwest Airlines v. Minnesota* (1944) 322 U.S. 292, 325 [Stone, C.J., dissenting], quoted in *Japan Line, Ltd. v. County of Los Angeles, supra*, 441 U.S. 434, 455.)

The totally international character of the corporate taxpayer in *Japan Line* is distinguished from the present situation where a United States parent corporation attempts to sever ties with its foreign subsidiaries for purposes of state taxation. The taxes levied by California are against appellant, a United States corporation doing business in the State of California, as opposed to a tax upon the foreign subsidiaries. The normal variations entailed in the use of different accounting formulas do not create such multiple taxation problems as to require its prohibition here. Further, the tax imposed in *Japan Line* was on instrumentalities of foreign commerce. By contrast, the tax imposed here is on total corporate operations; there is no curb on the free flow of commerce.

The unilateral act of one state may not be permitted to impede the conduct of United States foreign relations and foreign trade.[5] Appellant argues that the California approach could lead to retaliation and the imposition of a heavier tax burden by other states. Appellant underscores the differences between the federal tax scheme and the California formula apportionment method. Appellant insists that use of the federal separate accounting methods would simplify and standardize the worldwide approach to taxation. Adoption of the federal approach would purportedly reduce or eliminate impediments to the flow of capital and technology between the nations. But federal legislation requiring a uniform method for state taxation has never been adopted. (See *Mobil Oil Corp. v. Commissioner of Taxes, supra,* 445 U.S. 425, 449.) The California statutory scheme here adopted does not impermissibly

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[5]Examples of ways in which state government formulas may impede federal uniformity are provided in *Japan Line Ltd. v. County of Los Angeles, supra,* 441 U.S. 434, 450-451: "A state tax on instrumentalities of foreign commerce may frustrate the achievement of federal uniformity in several ways. If the State imposes an apportioned tax, international disputes over reconciling apportionment formulae may arise. If a novel state tax creates an asymmetry in the international tax structure, foreign nations disadvantaged by the levy may retaliate against American-owned instrumentalities present in their jurisdictions. Such retaliation of necessity would be directed at American transportation equipment in general, not just that of the taxing State, so that the Nation as a whole would suffer. If other States followed the taxing State's example, various instrumentalities of commerce could be subjected to varying degrees of multiple taxation, a result that would plainly prevent this Nation from 'speaking with one voice' in regulating foreign commerce."

burden international commerce. Appellant, the parent corporation, is engaged in a unitary operation with its foreign subsidiaries. Thus, the total corporate operations are subject to California's apportionment formula.

The judgment is affirmed.

Certified for publication.

Christian, J.

We concur:

Caldecott, P. J.

Poche, J.

[The judgment of the Court of Appeal is set forth in the final paragraph of its opinion and is not separately entered in the records of the Court.]

Appendix B

California Superior Court
City and County of San Francisco

No. 673-492

Container Corporation of America,
Plaintiff,

vs.

Franchise Tax Board,
Defendant.

[Filed Sept. 14, 1979]

NOTICE OF INTENDED DECISION

The above-entitled matter having come on for trial and evidence having been introduced by stipulation and through testimony, and the matter having been briefed and argued, was submitted to the Court on June 30, 1979. The Court renders herein its decision pursuant to Rule of Court 232.

The action involves a suit for refund of franchise taxes paid by plaintiff Container Corporation of America (hereinafter referred to as CCA) under the Bank and Corporation Tax Laws for the income years 1963, 1964 and 1965.

The issues are whether plaintiff (CCA) and its foreign subsidiaries engaged in a unitary business and therefore subject to formula apportionment under Revenue and Taxation Code § 25101; and (2) if so, does the fact that plaintiff CCA's subsidiaries were located outside the United States render invalid the application of formula apportionment?

I.

The Court finds that CCA and its foreign subsidiaries were engaged in a unitary business and are therefore subject to formula apportionment under Revenue and Taxation Code Section 25101. The unitary nature of a business is established by (1) unity of ownership, (2) unity of operation, and (3) unity of use. *Butler Brothers v. McColgan,* 17 Cal. 2d 664 (1941), aff'd. 315 U.S. 501 (1942).

CCA owned a controlling interest in its foreign subsidiaries. (*Stipulation of Facts, Para.* 10 and 25).

Unity of operation may be shown by central purchasing, advertising, accounting and management divisions. *Butler Brothers v. McColgan, supra.* It may also be shown by a common legal staff, a common retirement plan and financing services provided by one component of the business to another. *Chase Brass & Copper Co. v. Franchise Tax Board,* 10 Cal. App. 3d 496. If one of the above is not a factor in the taxpayer's business, its absence does not prevent a finding of unity of operation. *Honolulu Oil Corp. v. Franchise Tax Board,* 60 Cal. 2d 417.

CCA sold fibreboard, other paperboard and raw materials to the foreign subsidiaries in small amounts. (*Stip. Para.* 141). CCA purchased some paper from third parties and sent it to the subsidiaries who then reimbursed CCA; the amounts involved are unknown. (*Stip. Para.* 143). CCA assisted the subsidiaries in their purchase of equipment; and some equipment was purchased from CCA itself. (*Stip. Para.* 147). Ninety-eight percent of the equipment purchased by the Latin American subsidiaries was purchased with the acceptance of CCA's purchasing de-

partment. (*Stip. Para.* 148). CCA and all subsidiaries except two were audited by the same accounting firm (*Stip. Para.* 138). Accounting methods were not standardized among CCA and its subsidiaries, however, CCA strove to attain efficient accounting systems and procedures. (*Stip. Para.* 139). Where a subsidiary recommended expansion into a market unfamiliar to the subsidiary, CCA made a study of the situation. The final decision whether to move into a new market was made by CCA. (*Stip. Para.* 28). Major policy matters of the subsidiaries were generally subject to review by CCA. (*Stip. Para.* 74). Although CCA had a policy of "reaching decisions by mutual understanding rather than domination" CCA held management of the subsidiaries strictly responsible for their performance. (*Stip. Para.* 130). Finally, CCA loaned substantial amounts of money to its subsidiaries and guaranteed approximately one-third of loans obtained by the subsidiaries from other sources. (*Stip. Para.* 133). The fact that a subsidiary can turn to its parent for financial help is substantial evidence of unity of operation. *Chase Brass & Copper Co. v. Franchise Tax Board,* 10 Cal. App. 3d 496 (1970).

CCA had control of major policy matters which is an important element of unity of use. And CCA did make some sales to its subsidiaries. Rf: *Chase Brass & Copper Co. v. Franchise Tax Board, supra.* In addition to CCA holding of the management of subsidiaries strictly responsible for their performance, there were CCA representatives on the board of directors of almost all the subsidiaries. (*Stip. Paras.* 78, 94 and 110; and Exhibit E). CCA had a foreign operations staff responsible for over-

seeing the subsidiaries and for proving a channel of communications between CCA and the subsidiaries (*Stip. Paras.* 144-146). Such a flow is an element of unity of use. See *Honolulu Oil Corp. v. Franchise Tax Board, supra;* and *Superior Oil Corp. v. Franchise Tax Board, supra,* at 416.

The Court further finds that based on these facts there are contributions and dependencies between CCA's in-state business and its out-of-state business. Therefore, the formula allocation of income must be used. *Butler Brothers v. McColgan, supra.* The only limitation on the use of the formula allocation of income is that it "must not produce an unreasonable result." Id. at 671. An unreasonable result has not been demonstrated by plaintiff. Furthermore, the operations within and without the state need not be "necessary and essential" to each other and to the business as a whole for the in-state operations to be an integral part of a unitary business. *Superior Oil Corp. v. Franchise Tax Board, supra,* at page 413-414.

II.

The Court finds that the fact that CCA's subsidiaries are located outside the United States does not render invalid the application of formula apportionment. The fact that a business operates in foreign countries, rather than only in foreign states, does not prevent the Court from finding that CCA and its foreign subsidiaries constitute a unitary business. (See *Superior Oil Corporation v. Franchise Tax Board, supra,* and *Honolulu Oil Corporation v. Franchise Tax Board, supra.*) The Court is satisfied that such a finding does not contravene any constitutional provisions.

CCA has failed in its proof to demonstrate that the application of formula apportionment would deny it due process. The United States Supreme Court has upheld the unitary treatment of a foreign corporation and its in-state operations against due process challenges. (See *Bass, Ratcliff & Gretton, Ltd. v. State Tax Commission* (1924) 266 U.S. 271.) Similarly, application of formula apportionment would not violate the Commerce Clause. In *Bass, Ratcliff & Gretton, supra,* the unitary treatment of a foreign corporation and its in-state operations was upheld against Commerce Clause challenges.

The Court finally finds that *Japan Line, Ltd. v. County of Los Angeles* ..... U.S. ..... 47 U.S. Law Week 4477 (1979) is distinguishable from the facts herein and not applicable. The Court did not reach the question of "the taxability of foreign-owned instrumentalities engaged in interstate commerce or of domestically-owned instrumentalities engaged in foreign commerce." Id. at ..... N. 7, U.S. Law Week at 4480 N.7.

The Court therefore finds for defendant Franchise Tax Board and against plaintiff Container Corporation of America. Upon proper demand and in accordance with Rule of Court 232, defendant is to prepare findings of fact, conclusions of law, consistent with the opinions herein.

Dated: Sept. 11, 1979.

/s/ DANIEL M. HANLON

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Judge, Superior Court

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Superior Court of the State of California
City and County of San Francisco

No. 673 492

Container Corporation of America,
Plaintiff,

vs.

Franchise Tax Board,
Defendant.

(Marked Filed by Court Clerk October 23, 1979)

JUDGMENT AFTER TRIAL BY COURT

The above-entitled matter came on regularly for trial on February 23, 1978, at 11:25 a.m., Plaintiff appearing by its attorneys Morrison & Foerster by Franklin C. Latcham and Prentiss Willson, Jr., and defendant appearing by its attorneys Evelle J. Younger, Attorney General, by Philip M. Plant, Deputy, and this being a proceeding properly triable by the court without any jury; the court having heard the testimony and considered the evidence together with written and oral argument; the Court having filed its notice of intended decision on September 14, 1979; and findings not having been requested; and good cause appearing therefor:

It Is Hereby Ordered, Adjudged and Decreed that plaintiff Container Corporation of America take nothing by its action; and that defendant Franchise Tax Board recover its costs in the amount of $.....

Dated: October 19, 1979.

Daniel M. Hanlon

Daniel M. Hanlon, Judge

Approved as to Form:
Morrison & Foerster

By: /s/ Franklin C. Latcham

Attorneys for Plaintiff
Container Corporation of America

Appendix C

CONTAINER CORPORATION OF AMERICA

Parent and Non-One Hundred Percent Owned Subsidiaries of Container Corporation of America

Parent: Mobil Corporation

Subsidiaries:

DOMESTIC

T. R. Miller Mill Company, Inc.

FOREIGN

Carton de Colombia, S.A.

Compania Colombiana de Empaques Bates, S.A.

Occidental de Empaques, Ltda.

Industria de Carbon del Valle del Cauca, S.A.

Reforestadora del Cauca, S.A.

Carton de Venezuela, S.A.

Fibras Internacionales de Puerto Rico

Molinos de Carton y Papel, S.A.

Cartones Nacionales, S.A.

Cartoenvases Valencia, S.A.

Corrugadora de Carton, S.A.

Union Grafica, S.A.

Appendix D

Court of Appeal of the State of California
in and for the
First Appellate District

Division Four

No. 48990

Container Corporation of America,
Plaintiff and Appellant,

vs.

Franchise Tax Board,
Defendant and Respondent.

(Marked Filed by Court Clerk May 4, 1981)

By the Court:

The petition for rehearing is denied.

Dated May 4, 1981

Caldecott, P.J.

Appendix E

Order Denying Hearing
After Judgment by the Court of Appeal
1st District, Division 4, Civil No. 48990

In the Supreme Court of the State of California

In Bank

Container Corporation of America

v.

Franchise Tax Board

Appellant's petition for hearing Denied.

(Marked Filed by Court Clerk June 17, 1981)

Bird
Chief Justice

Appendix F

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In the Court of Appeal
of the
State of California

First Appellate District

Division Four

1 Civil No. 48990

Container Corporation of America,
Plaintiff and Appellant,

vs.

Franchise Tax Board,
Defendant and Respondent.

(Marked Filed by Court Clerk July 31, 1981)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Container Corporation of America, the Plaintiff and Appellant above-named, hereby appeals to the Supreme Court of the United States from

the entire final judgment of the Court of Appeal of the State of California entered in this action on April 14, 1981 (Petition for Rehearing denied by the Court of Appeal on May 4, 1981; Petition for Hearing denied by the Supreme Court of California on June 17, 1981), affirming the judgment of the Superior Court of the State of California, in and for the City and County of San Francisco.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: July 31, 1981.

Franklin C. Latcham
Prentiss Willson, Jr.
Thomas H. Steele
Morrison & Foerster

By FRANKLIN C. LATCHAM

Franklin C. Latcham
Counsel for Plaintiff
and Appellant

Appendix G

Title 18, California Administrative Code, § 25120: . . .

(b) Two or More Businesses.—One corporate entity may have more than one "trade or business." In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula which takes into consideration the instate and outstate factors which relate to the business the income of which is being apportioned.

Example: The taxpayer is a conglomerate with three operating divisions. One division is engaged in manufacturing aerospace items for the federal government. Another division is engaged in growing tobacco products. The third division produces and distributes motion pictures for theaters and television. Each division operates independently; there is no strong central management. Each division operates in this state as well as in other states. In this case, it is fair to conclude that the taxpayer is engaged in three separate "trades or businesses." Accordingly, the amount of business income attributable to the taxpayer's trade or business activities in this state is determined by applying an appropriate apportionment formula to the business income of each business.

The determination of whether the activities of the taxpayer constitute a single trade or business or more than one trade or business will turn on the facts of each case. In general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the divisions under consideration are integrated with, dependent upon or contribute to each other and the operations of the taxpayer as a

whole. The following factors are considered to be good indicia of a single trade or business; and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business:

(1) Same type of business: A taxpayer is generally engaged in a single trade or business when all of its activities are in the same general line. For example, a taxpayer which operates a chain of retail grocery stores will most always be engaged in a single trade or business.

* * *

Appendix H

Hourly Earnings Rates Translated into United States Dollars for Wage Earners in Manufacturing Industries[1]

Country	Year 1967	1968	1969
United States	$2.83	$3.01	$3.19
Australia	1.21M	1.28M	1.36M
	.75F	.89F	.96F
Austria	.88	.93	.99
Barbados	.34	.39	.43
Belgium	1.04M	1.09M	1.19M
	.67F	.71F	.77F
Brazil	.38	.35	.41
Burma	.18M	.17M	.17M
	.15F	.14F	.15M
Canada	2.22	2.40	2.60
Chile	.36	.36	.38
Colombia	.29	.30	.31
Denmark	1.62	1.80	2.02
Ecuador	.20	.22	.31
Finland	1.00M	1.12M	1.21M
	.69F	.77F	.85F
France	.69	.77	.76
Germany, F.R.	1.25M	1.30M	1.55M
	.86F	.90F	1.08F
Ghana	.28	.31	.33
Greece	.42	.46	.50
Italy	.68	.71	.78
Japan	.65	.77	.91
Malawi		.11	.17
Mexico	.62	.65	.68
New Zealand	.92	.97	1.28
Norway	1.46M	1.57M	1.72M
	1.07F	1.17F	1.28F
Philippines	.24	.24	.25
Puerto Rico	1.39	1.55	1.65
Spain	.41	.45	.50
Sri Lanka	.13	.14	.14
Sweden	1.91M	2.02M	2.21M
	1.47F	1.57F	1.74F
Switzerland	1.33	1.42	1.49
United Kingdom	1.16	1.23	1.34
Venezuela	.99	1.07	1.04

[1]Source: United Nations, monthly Bulletin of Statistics, December 1972, Table 57, at 148, based on data from International Labour Office.

M refers to wages of males and F, wages of females; in other countries single composite figures are given. Figures normally in-

clude bonuses, cost of living allowances, taxes, social insurance contributions payable by the employed person and, in some cases, payments in kind. They normally exclude social insurance contributions payable by the employers, family allowances and other social security benefits. In a few instances, family allowances and salaried employees have been included in the figures. The information published by the United Nations is stated in terms of the local currency, which we have translated into dollars by the applicable midpoint exchange rates (in most cases) published in the United Nations Statistical Report, p. 216. In these cases in which daily, weekly, or monthly wage rates are given in the U.N. figures, we have assumed an 8-hour day, 44-hour week or 190.5-hour month for conversion purposes, which we regard as highly conservative. The foregoing table omits some of the countries as to which information is provided, most of which are in the Soviet bloc. In all cases with respect to the countries omitted, the average hourly earnings are substantially below those of the United States.

Appendix I

Percentage of U.S. Average Hourly Compensation, Adjusted for Estimated Differences in Productivity[1]

Country	1969	1970
Japan	40	40
West Germany	61	72
United Kingdom	65	68
Belgium	60	61
Canada	79	82
France	58	54
Italy	62	67
Netherlands	74	71
Sweden	72	74

[1]Source: United States Tariff Commission, *Competitiveness of U.S. Industries* (T.C. Publication 473) at 30 (1972).